

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 JARED RYAN MARCUM,

11 Defendant.

No. 4:15-CR-06031-EFS-1

**ORDER MEMORIALIZING RULINGS FROM  
OCTOBER 4, 2017 PRETRIAL  
CONFERENCE**

12  
13 On October 4, 2017, the Court held a pretrial conference in this  
14 matter. Defendant Jared Ryan Marcum was present, represented by  
15 Nicholas Wright Marchi. Assistant U.S. Attorney Laurel Jane Holland  
16 appeared on behalf of the U.S. Attorney's Office (USAO). Before the  
17 Court were Defendant's Motion to Dismiss Indictment, ECF No. 106,  
18 Motion to Provide Copy of Discovery to Defendant, ECF No. 119, and  
19 Motion to Allow Defendant to Access CDs in the Custody of Yakima  
20 Correction Staff, ECF No. 120. Also before the Court was the USAO's  
21 Ex Parte Motion for In Camera Review of Grand Jury Transcript, ECF  
22 No. 117. At the pretrial conference, the Court ruled on these  
23 motions; this Order memorializes and supplements the Court's oral  
24 rulings.

25 //

26 /

1                   **I.       MOTION TO DISMISS INDICTMENT (ECF NO. 106)**

2           In asking the Court to dismiss the Indictment, Defendant repeats  
3 many of the same arguments previously made in his Motion and  
4 Memorandum for Grand Jury Transcripts, ECF No. 85. Defendant  
5 continues to believe that the Computer Aided Dispatch (CAD) logs  
6 produced in this case somehow prove that the police moved the car  
7 involved, either before or after searching it. Defendant theorizes  
8 that police did not disclose this detail to the grand jury, and he  
9 argues that this requires dismissing the resulting Indictment.

10   **A.   Applicable Law**

11           In *United States v. Basurto*, the Court of Appeals for the Ninth  
12 Circuit held that "the Due Process Clause of the Fifth Amendment is  
13 violated when a defendant has to stand trial on an indictment which  
14 the government knows is based partially on perjured testimony, when  
15 the perjured testimony is material, and when jeopardy has not  
16 attached." 497 F.2d 781, 785 (9th Cir. 1974). Put another way, a  
17 court will only dismiss an indictment based on testimony in the grand  
18 jury proceedings if the defendant shows both that the witness  
19 knowingly falsified his testimony, and the perjured testimony related  
20 to a material issue. See *United States v. Flake*, 746 F.2d 535, 538-39  
21 (9th Cir. 1984) overruled on other grounds by *United States v.*  
22 *Uchimura*, 125 F.3d 1282, 1286 (9th Cir. 1997). And courts will not  
23 assume the materiality of an allegedly perjurious statement. See  
24 *United States v. Kaplan*, 554 F.2d 958, 970 (9th Cir. 1977).

25           The holding in *Basurto* "was carefully and narrowly drawn."  
26 *Flake*, 746 F.2d at 538. Due process does not require that prosecutors

1 present exculpatory evidence to grand juries. *See United States v.*  
2 *Isgro*, 974 F.2d 1091, 1096 (9th Cir. 1992). And when deciding whether  
3 to take the drastic measure of dismissing an indictment, "a court must  
4 not only determine whether a defendant has suffered actual prejudice,  
5 it must also limit its consideration to those events that actually  
6 bear upon the grand jury's decision to indict." *Id.* at 1097-98.

7 **B. Analysis**

8 Defendant correctly points out that the CAD logs in this case  
9 begin with an entry that lists cross streets of West 1<sup>st</sup> Avenue and  
10 South Fruitland Street. See ECF No. 106-1 at 7. The towing call logs  
11 list the same location. ECF No. 106-1 at 11, 13. Yet, every other  
12 piece of evidence indicates that the car was stopped and searched  
13 approximately one block to the north – at the intersection of  
14 Kennewick Avenue and Fruitland Street. See, e.g., ECF No. 106-1 at 15  
15 (search warrant), 17 (return of search warrant), 25 (officer  
16 testimony); see also, e.g., ECF No. 50-1 (multiple police reports),  
17 ECF No. 55-2 (photos of the car, apparently mid-search, at Kennewick  
18 Ave. and Fruitland St.).

19 Defendant is incorrect, however, that this apparent  
20 inconsistency mandates dismissal of the Indictment. Defendant offers  
21 no possible reason why police would move the car approximately a  
22 block, much less why they would then try to hide that fact.<sup>1</sup> And  
23 Occam's razor cuts in favor of an innocent explanation, such as a  
24 mistake or imprecision in the CAD logs, rather than Defendant's theory  
25 that officers moved the car for some unknown, nefarious purpose.

---

26 <sup>1</sup> Defendant maintains that moving the car raises an issue as to the chain of  
custody and the validity of the search of the car. See ECF No. 85 at 2.

1 More importantly, even if police did move the car, that fact  
2 would not have affected the grand jury proceedings. As discussed  
3 below, the USAO provided a transcript of the grand jury proceedings  
4 for in camera review by the Court. The testimony contains no  
5 reference to either the location of the traffic stop or the resulting  
6 car search. Given the evidence before the Court, a review of the  
7 transcript reveals no inconsistency, let alone any knowing falsehood,  
8 in the testimony. Further, the witness made clear to the grand jury  
9 that the testimony did not describe all the available information but  
10 was instead limited to only what was believed necessary to establish  
11 probable cause. Due process and the case law of the Ninth Circuit  
12 require nothing more. See *Isgro*, 974 F.2d at 1096. Defendant's Motion  
13 to Dismiss Indictment, ECF No. 106, is denied.

14 **II. PERSONAL COPIES OF DISCOVERY (ECF NO. 119)**

15 Defendant seeks personal copies of all discovery that the USAO  
16 has thus far provided to defense counsel. See ECF No. 119. Defendant,  
17 however, has a history of violence, is before this Court for serious  
18 drug distribution charges, and is currently incarcerated.<sup>2</sup> In such  
19 cases, to guard against improper use of sensitive information,  
20 personal copies of discovery materials are not usually provided to  
21 defendants. Rather, discovery is entrusted to defense counsel, who  
22

---

23 <sup>2</sup> As set forth in the Pretrial Services Investigation Report, ECF No. 15,  
24 Defendant's criminal history and characteristics include – but are not  
25 limited to – two prior convictions for attempt to elude police, one prior  
26 conviction for bail jumping, three convictions for assault-related matters,  
three convictions for firearm-related matters, one prior conviction for  
drug-related matters, being a known gang member, disciplinary issues while  
incarcerated, and being under supervision at the time of the instant  
offense.

1 will ensure the defendant has adequate access. See Fed. R. Civ.  
2 P. 16(d)(1) (allowing for restrictions on discovery).

3 Here, the Court finds that Defendant has no special need for  
4 personal copies of discovery. The Court therefore finds no reason to  
5 deviate from its normal practice. Defendant's Motion to Provide Copy  
6 of Discovery to Defendant, ECF No. 119, is denied.

7 **III. ACCESS TO COMPACT DISCS (ECF NO. 120)**

8 Defendant filed a motion asking for a court order allowing him  
9 to access compact disks (CDs), which are currently in the possession  
10 of Yakima County Corrections. ECF No. 120. He asserts that it is  
11 "assumed that the CDs are DNA information form the Washington State  
12 Patrol Crime Lab." ECF No. 120 at 1.

13 At the pretrial conference, defense counsel stated that  
14 Defendant was being transferred between facilities and asked that the  
15 Court hold this Motion in abeyance. Since then, the administration  
16 for the facility at which Defendant is currently housed contacted the  
17 Court and indicated that Defendant will likely be able to access and  
18 review the CDs via a secure computer. As such, Defendant's Motion to  
19 Allow Defendant to Access CDs in the Custody of Yakima Correction  
20 Staff, ECF No. 120, is denied as moot. Defendant may renew his motion  
21 if he continues to be unable to access the CDs.

22 **IV. IN CAMERA REVIEW OF GRAND JURY TRANSCRIPT(ECF NO. 117)**

23 In responding to Defendant's motion to dismiss the Indictment,  
24 the USAO submitted, ex parte, a copy of the grand-jury transcript and  
25 asked that the Court conduct an in camera review. As discussed above,  
26 the Court has done so. The USAO's Ex Parte Motion for In Camera

1 Review of Grand Jury Transcript, ECF No. 117, is therefore granted.  
2 The USAO's Motion, ECF No. 117, and the attached transcript, ECF  
3 No. 117-1, shall remain sealed-ex parte.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Defendant's Motion to Dismiss Indictment, **ECF No. 106**, is  
6 **DENIED.**

7 2. Defendant's Motion to Provide Copy of Discovery to  
8 Defendant, **ECF No. 119**, is **DENIED.**

9 3. Defendant's Motion to Allow Defendant to Access CDs in the  
10 Custody of Yakima Correction Staff, **ECF No. 120**, is **DENIED**  
11 **AS MOOT WITH LEAVE TO RENEW.**

12 4. The USAO's Ex Parte Motion for In Camera Review of Grand  
13 Jury Transcript, **ECF No. 117**, is **GRANTED.** The Clerk's  
14 Office is advised that motion, ECF No. 117, and the  
15 attached transcript, ECF No. 117-1, shall remain sealed-ex  
16 parte.

17 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
18 Order and provide copies to all counsel.

19 **DATED** this   6<sup>th</sup>   day of October 2017.

20 \_\_\_\_\_  
21   s/Edward F. Shea    
22 EDWARD F. SHEA  
23 Senior United States District Judge  
24  
25  
26